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When the victim becomes the offender?

A discourse analysis of victim blaming regarding rape

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Abstract

In 2014, a man was accused of raping a woman but was acquitted despite the fact that the woman said “no” and “stop”. He claimed to have thought that it was part of dominant sex games and by that, assumed she liked it. That the man was acquitted, even though the court ruling concluded that the woman had been forced to sexual intercourse, can be a result of a process of victim blaming; a process where the victim’s behavior, prior to the rape become a factor of significance. In this thesis I have conducted a discourse analysis of this specific case, where I have looked for patterns of victim blaming and analyzed the findings from a post-structural feminist perspective as well as Foucault’s ideas of power. To understand the process, concepts and theories of the patriarchy, rape myths and the idea of the woman and the man, are presented. I find that patterns of victim blaming can be identified in case nr: B5865-13 and that the process of victim blaming should be understood with the historic discourse of the woman and the man in mind, as this has created ideal gendered behavior. Furthermore, I find that the victim blaming process makes for unequal power relations between women and men, and by extension enables men’s sexual violence against women today.

Key words: Victim blaming, rape myths, post-structural feminism, discourse analysis, Foucault

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1 Introduction

In 2013 there were 6,000 rapes reported in Sweden. Out of these 6,000 cases, 98 percent of the perpetrators were men (Brå, 2014). In the media, the cases where the rapist is acquitted, seems to be ever present. This can partially be a result of a victim blaming process, which will be the focus of this thesis. The process, in which the victim gets partially blamed by questioning *her* behavior prior to the rape, as if something she did provoked the offence, is the process of so called victim blaming.

Two separate studies, conducted by Amnesty in 2008 and Brå (The Swedish National Council for Crime Prevention) in 2013, concluded the same thing; that there are attitudes of victim blaming regarding rape in Swedish society (Amnesty, 2008, NTU 2013:8-9). This was ever present in case nr: B5865-13 where a man was acquitted due to his presumable lack of *intent* to rape the woman, even though she said “no” and “stop” several times. He claimed that, had she objected with more determination in the voice, he would have taken it seriously, but instead he thought she liked it (Lunds Tingsrätt, 2014:17).

I am interested in trying to understand the process of victim blaming regarding rape since it seems to be a recurrent phenonomen. Would the number 6,000 rapes be accurate, that would mean that there are approximately 16 rapes in Sweden every day. However, BRÅ claims in the Nationella Trygghetsundersökningen (NTU) survey that the number of unrecorded rapes are widespread in the population and it is expected that the actual number of rapes is closer to 36 000 (in 2012) (NTU 2013: 49), which would mean that there are approximately 99 rapes in Sweden *every day*. Irrespective of what number is more accurate, it is number that is too high, and I want to try to create an understanding concerning the occurrence of rape, and more specifically the occurrence in which the victim of rape becomes the subject of blame.

1.1 Purpose and research question

The purpose of this thesis is to contribute to the understanding of victim blaming by conducting a discourse analysis of the court ruling in case nr: B5865-13, which thus serves the purpose of being an example. Discourse analysis has its roots in social constructivism and a key premise is that it is not possible to reveal something as true or false (Winther Jørgensen & Phillips, 2002:21). With that said, my goal is to present an alternative way to view and expose the process in which the victim becomes the

co-offender. This will be analyzed through a lens of post-structural feminism and power. I will seek to do this with the question:

- How can we understand the process in which victim blaming regarding rape is (re)produced in case nr: B5865-13?

This particular research is important because it can come to question socially accepted norms that puts women in a disadvantage to men. I aim to unmask and question the taken-for-granted and common-sense understandings of the world and open them up for discussion. The result and conclusions made in this thesis is aspiring to be a contextual understanding of the process of victim blaming

1.2 Thesis outline

As mentioned above, I will look at the court ruling from one specific case (hereafter referred to as case nr: B5865-13) to try to understand the process of victim blaming. The court ruling of rape case, nr: B5865-13, thus serves the purpose of being an example of a situation in which victim blaming has occurred. The court ruling is a document of 30 pages that includes a background, the main arguments in the man's and the woman's separate testimonies and finally the actual decision where the man is acquitted. The reason I chose case nr: B5865-13 was because of the circumstances, more specifically the fact that the victim actually said "no". It should be noted that due to the construction of the text and the fact that the court ruling is in Swedish I have chosen to not use quotes but rather summarize what I have found to be relevant material for the analysis. The case will be presented in the following chapter.

In my analysis I will look for patterns of victim blaming in case nr: B5865-13 and try to evaluate and analyze the findings from a post-structural feminist perspective, where Judith Butler is one of the front figures. Butler says that a feminist critique should strive to understand how women are constituted and limited by those power structures she wishes to be liberated from (Butler, 2007:51). This leads us to the next analysis tool I have chosen to include, which is a theory of power, formulated by Michel Foucault, one of the most prominent and influential discourse analysts in history. In general, when using Foucault, a certain element of interpretation is required by the researcher. As described in a later stage of the thesis, Foucault's theories develop and somewhat change with time, and due to that it is up to the individual researcher to decide on what is most suitable in order to make a coherent theoretical frame for the study. As theory and method are intertwined in discourse analysis I will present both the theoretical and methodological aspects in chapter 3 as well as relate it to my research. This is done to create a more cohesive structure.

In order to understand the process of victim blaming, I need to reflect upon the historic significance of where the idea of the women and the man has its origin,

which can be a potential source of victim blaming. Therefore, ideas of the patriarchy, the idea of the woman and the man as well as rape myths, which has been constituted through history, will be presented in chapter 4. The material in this chapter consists of a combination of books and peer reviewed articles. I have made a strategic selection when choosing authors, all of which are scholars with expertise in their respective areas. Additionally I have found that the authors' texts are a good representation of what is written in their specific area of expertise.

To summarize, my thought is to look for examples of victim blaming in the court ruling, and then match the findings with the ideas of the woman and the man, the patriarchy and rape myths, and analyze this from a power perspective and post-structural feminist perspective and by that shed light on the tendencies to put blame on the woman rather than the man.

1.3 Limitations

In this thesis, when speaking of the victim I refer to a girl/woman and when speaking of the offender I refer to a boy/man. This decision is not based on preconceptions but rather on statistics and the fact that in the crime of rape men are over represented as offenders. Men, and particularly young men, are over represented as offenders as they constitute 98 percent of the suspects (in 2012) (Brå, 2014). With that said it should be noted that this thesis will be limited to speak of rape of women/girls by men/boys. Even though both women and men can be victims and perpetrators of rape, like stated above, a majority of the perpetrators are male.

Because analysts are often part of the culture under study, they share many of the taken-for-granted, common-sense understandings expressed in the material. A person can never talk from a position outside the discourse and I am also part of the structures that are upheld by the discourse. However, by including other theoretical perspectives I can partly distance myself from the discourse and analyze the material from a different point of view. This will be done with the help of post-structural feminism and Foucault's theory of power.

I will speak of the specific case as a rape even though the offender was not sentenced. This can be motivated by the circumstances of the specific case where the court ruling concludes that the woman was violently forced to have sexual intercourse with the man against her will.

It is somewhat problematic to speak of women and men as separate homogenous groups since they are very diverse. I would like to make notice that I am not speaking of women and men in a general sense but of *ideas* of women and men that might influence the process of victim blaming.

2 Rape case nr B5865-13

On the 24th of November 2013, a 25-year-old woman and a 27-year-old man met at a restaurant in Lund and by the end of the night, they decided to go home together. In his apartment they talked shortly about sexual preferences and their stories differ some concerning what was said but they agree that the subject of dominating sex or aggressive and violent sex was *not* covered. Initially, the physical contact was mutual and their stories are corresponding up to the point in which it switched from fondling to intercourse (Lunds Tingsrätt, 2014:4-5).

According to the woman, she tried to stop the sexual act several times, initially when the vaginal penetration started, by saying: “I cannot do this” which he replied with “yes, you can”, and she expresses that she in this stage was scared and uncomfortable (Ibid:6). The man denies that this conversation ever happened (Ibid:12). The woman states that she was very clear in her protests and as his aggression increased, so did her protests. As he placed her on her stomach, he blocked her air ways with his hand and she pulled his hair and tried to scream, which made her lose her voice. When he initiated oral sex by sitting on her, she claims to have bitten him in the thigh (Ibid:7), something that he does not recall (Ibid:16). She also claims to have said “no” and “stop” several times, not in a playful way, but with fear in the voice, as well as physically protesting by trying to push him off her and get out of the bed, by which he pulled her back (Ibid:8). She states that not once, did he ask if she was okay (Ibid:9).

His story, on the other hand, is that this was all part of dominant sex games, which he interpreted that she liked from their conversation earlier in the night, as well as the fact that she initially had pressed his hand hard against her vagina. He understood this as signals that she liked rough sex and because of that he perceived the “no’s” and “stop” as playful and not that she actually wanted him to stop (Ibid:6, 13). When she stopped the initial penetration he perceived it as she wanted to wait until later, not that she wanted to stop altogether. It appears that what she refers to as painful moaning, he perceived as moaning of pleasure (Ibid:6, 12). The man recognized that the woman protested and admitted that he held his hand over her nose and mouth but claimed that he thought she liked it (ibid:6). He also admits to slapping her in the face at one point (Ibid:6,15) which she also supposedly did to him. (Ibid:6, 16). When trying to initiate both anal sex and oral sex he took notice of her protests and with that stopped immediately (Ibid:6, 12). He also claims to have asked her if she was okay, by which she supposedly nodded as a reply (Ibid:6, 15).

In the court ruling it is stated that both sides were found credible. Eventually, the court concluded that it had been proven that the man had used violence to force the woman into sexual intercourse but that it, without reasonable doubt was proven, that he had not *intended* to rape her. Due to that, the man was acquitted (Ibid: 21, 24).

3 Discourse analysis

In discourse analysis, theory and method are intertwined. Although discourse analysis should be used as a package, to make the research more multifaceted, it is possible to include other theories. When doing so, it is important that the different theories and concepts complement each other to create a cohesive theoretical frame (Winther Jørgensen & Phillips, 2002:4). In this chapter, my theoretical framework is presented.

3.1 Discourse analysis as theory

There are a variety of ways to define discourse but I have chosen to combine two definitions found in Winther Jørgensen & Phillips, which resulted in: “socially constructed meaning-systems within a particular domain” (Winther Jørgensen & Phillips, 2002:21, 141.) Foucault refers to discourse as: “any kind of practice that produces a certain type of expressions” [my translation] (Bergström, & Boréus, 2005:309).

Discourse analysis rest on social constructivism and a fundamental premise is that our access to reality goes through language and can never be an objective mirror image of how it really is (Winther Jørgensen & Phillips, 2002:8-9). Or in other words, people’s perception of reality is never neutral (Neumann, 2003:30) and reality can never can be reached outside the discourse (Winther Jørgensen & Phillips, 2002:21). The language is seen as a social system that shapes people’s perception of reality (Ibid:18) and therefor it is the language that is the object of analysis. The purpose is not to reveal the reality “behind” the discourse, as there is none, or to try to figure out what people really mean when they say certain things. Instead, the analyst should work with the actual written or spoken word and in that try to identify patterns in and across statements and detect possible social consequences of different discourse representations of reality (Ibid:21). With that said, it is language that constitutes the social world, social identities and social relations and changes in discourse can result in changes in the social world (Ibid:9).

3.2 Foucault on power

Foucault's work can be divided into two phases, archeology and genealogy. The ideas of the archeology phase are continually present when Foucault enters the genealogy phase (Winther Jørgensen & Phillips, 2002:12). The archeology phase focuses on different regimes of knowledge, in other words, the rules for what can and cannot be said, and the rules for what is considered true or false. He speaks of the history of the discourse and that the historical rules of the particular discourse delimit what is possible to say (Ibid:13). This means that a historical awareness is necessary in order to be able to understand the present circumstances and the way in which the social world is viewed (Foucault, 1982:778). In the genealogy phase Foucault focuses on power which he says is spread across different social practices and does not belong to particular agents. Power can be oppressive but it can also be productive (Winther Jørgensen & Phillips, 2002:13). An example of both oppressive and productive power is identifying women by gender, which generates and produces discourse that through history, social and cultural constructions of sex has a fundamental role in shaping an individual's pleasures, pains, and sense of selfhood. Further it is oppressive in the way that norms are replaced with laws which is the primary instrument of social control (Henderson, 2013:237). Foucault means that power constitutes discourse, knowledge, bodies and subjectivities and by that power provides the conditions of possibility for the social. In other words, it is in power that the social world is produced and subjects are separated from each other (Winther Jørgensen & Phillips, 2008:14) which create opportunities for some and restrictions for others (Bergström, Boréus, 2005:311). Power is thus both a productive and constraining force (Winther Jørgensen & Phillips, 2002:14).

In order to understand power, Foucault identifies common denominators between different types of struggles. What he finds is that the struggles are anchored in an opposition against the technique in which the power is used. It is the effects of power which makes individuals subjects. The subject is made in relation to someone else by control and dependence, according to Foucault, and it is a form of power which both *subjugates* and makes subjects (Foucault, 1982:781). In power relations, sexuality is not a submissive bystander but rather a tool that can be used in several different ways (Foucault, 1976:131) Sexuality thus, is an expression of power and gives reason to historical patterns (Foucault, 1976:134, 136). The technology of the sex and gender is expressed through a line of techniques that more or less aim to discipline the body, or in other words, inscribe meanings to bodies that are a limiting force (Ibid:183).

The term power is characterized by, and designates the relationships between individuals and groups where certain persons exercise power over others (Foucault, 1982:786). This requires that the subject, in whom the power is exercised over, is a free subject with several possibilities in ways of behaving and reacting. With other words, freedom must exist for power to be exerted (Ibid:790) but it does not require any consent (Ibid:787). Foucault claim power to be a way in which certain actions

modify others and power only exist when put into action. In other words, power is not something that is possessed, but rather something that is exercised (Foucault, 1976:119), hence power is never constant (Foucault, 1982:787-788). It is worth noting that power should not be seen as top-down exercise, but rather as a circular process of production and reproduction (Foucault, 1976:120). The way it is manifested is a result of structures and creates effects of power, for example communication (Foucault, 1982:787).

Foucault claims that it is impossible to discover a universal truth, since no one is capable of speaking from a position outside the discourse. There is therefore no point in asking if something is true or false because truth is produced and embedded in systems of power. Instead, he speaks of the construction and production of truth effects that give the impression that they represent true or false images of reality. These effects of truth are created in discourses and it is the discursive process that should be object of analysis (Winther Jørgensen & Phillips, 2002:14).

3.3 Post-structural feminism

There are different branches of feminism that might focus on different aspects or solutions to inequality. But despite differences, Dr. Thomsson and Dr. Elvin-Nowak claim that most feminist would agree that a fundamental premise of feminism is the awareness of power imbalance between women and men. They continue to say that feminists share the understanding that gender and power are connected and that women are generally subordinated. People defining themselves as feminists want to change the power structures that enable women and men different resources and opportunities (Thomsson, Elvin-Nowak, 2013:62-63).

These different branches of feminism have evolved with time and post-structural feminism, specifically, rests on social constructivism. Discourses are fundamental in trying to understand the way the world is constituted, and they are changeable in different contexts (Lenz Taguchi, 2014:18). Some discourses dominate others and the dominant discourses can be normalized, which can lead to social consequences for certain groups (Ibid, 2014:100). According to Butler, a feminist critique should aspire to understand how the subject of feminism; women, are *made* and *limited* by the power structures that they wish to be liberated from (Butler, 2007:51).

In post-structuralism structure and practice are viewed as one process. Structure rather than being an underlying entity, only exist in the discursive practices that reproduce and transform it (Winther Jørgensen & Phillips, 2002:139). Professor Hillevi Lenz Taguchi explains that one way of thinking cannot be completely replaced by another. However, it is important to be critical and expose existing dominant discourses, in order to understand the constructions and limitations they produce in our lives (Lenz Taguchi, 2014: 46-47). With that said, the first step in changing the discourse is to expose what needs to be changed (Ibid, 2014:22)

According to post-structural feminism, the productive power of the discourses forces people into certain ways of being but the discourses also makes some ways of being so desirable that people actively adopts them as part of themselves. Through that, a woman is *constructed* and *constructs* to a legitimized and recognizable member of a social group (Lenz Taguchi, 2014:18). Language thus, has a big impact in the process of making gender (Thomsson, Elvin-Nowak, 2013:243). The primary goal is to study processes where the dichotomy of male-female is central and the subject itself is participating in creating the dominant discourse, as well as being object of the dominant discourses (Lenz Taguchi, 2014:95). Without the subjects own participation in both taking on conceptions and actions as well as reproducing the dominant discourse, there would be no obvious norms concerning how to be as a woman or a man (Ibid, 2014:116).

By categorizing people in women and men, certain features are subscribed to the biological sex which comes to be understood as feminine/female and masculine/male (Butler, 2007:36). This, however, is merely a social construction of sex, a category Butler calls *gender*. In other words, gender is a cultural and linguistic construction of the biological sex (Ibid:11). Butler claims that the way gender is constructed is a limiting force (Ibid:35) and that there is no gender identity behind the expressions of gender; the gender identity is constructed through the expressions that is said to be its effects (Ibid:78). To be born in a body that is portrayed as female or male contributes limitations and expectations that are connected to culturally established conceptions of what is male and female (Thomsson, Elvin-Nowak, 2013:244) and these meanings of gender are inscribed in the structures of society (Ibid, 2013:241).

The post-structural idea is to examine what we stand in and with that identify dominating conceptions and practices that we are intertwined in and intertwine our practices with. By doing so, one is not more free or emancipated in any other way than by the feeling of insight which can be seen as a starting-point for change (Lenz Taguchi, 2014:172)

3.4 Discourse analysis as method

Butler says that the genealogical method aims to exteriorize the fundamental historicity of concepts by identifying the political and ideological context from which they are derived. By doing so the researcher can find a subjugated and local discourse where the differences become apparent (Butler, 2007:8). Further, Foucault speaks of method of precautions that should be kept in mind while conducting an analysis of power. I will use these precautions as guidelines in my research.

The researcher should start with locating where power can be found. Then, one should keep in mind, that power is contextual and should be analyzed, not only where it is centralized but rather in its extremities in a more local form (Foucault, 1976:125, Foucault, 1980: 96-97). The next step in the analysis is to look at the *expressions of power* from which power relations can be derived (Foucault, 1976:126, Foucault, 1980: 97). In other words, examine the process in which power constitutes subjects as an effect of power. The researcher should ask then *how* power is both constituted and constitutes (Foucault, 1976:127) and be aware of that power should therefore be seen as a circular force that extends everywhere and all individuals are simultaneously undergoing and exercising power (Foucault, 1980: 98). Finally, language is an effect of power that contains and produces power. By studying the language's history and technique, the researcher can find the strategy of power that emphasizes the purpose rather than the law (Foucault, 1976: 128-130, Foucault, 1980: 99). More simply, find where the power is derived from.

My interpretation of these precautions is that power foremost is a circular phenomenon and should be analyzed within a specific context, with an awareness of its historical techniques and the object of analysis is to be found not only where power is centralized but primarily where it is practiced with a less legal character.

3.4.1 Discourse analysis in this thesis

Discourse analysis can be done in many different ways and as mentioned before there is an element of interpretation when using Foucault. My analysis will focus less on where power can be found and more on the expressions of power. This is in line with Foucault's methodological precautions that will, as stated above, serve as guidelines in my discourse analysis. As the description can be somewhat abstract I will shortly present how they will be applied in my research.

The first step is to identify where power can be found, and in this thesis I mean that power is to be found in the relations between women and men and in extension, in the occurrence of rape. The expression of power can be identified in the subjugated and local discourse, which in my case is the discourse of victim blaming. The court ruling can be seen as a reflection of the dominant discourses and by looking at case nr: B5865-13, I can see how power construct and is constructed by the process in which the victim becomes the subject of blame. In other words, where the woman is made partly responsible for her own victimization. Finally, the history of the victim blaming discourse; patriarchy, the idea of the woman and the man, as well as rape myths and rape scripts will be applied to the findings in case nr: B5865-13 and analyzed through a post-structural feminist perspective as well as Foucault's idea of power.

In the following chapter, key concepts and theories connected to post-structural feminism that will be used in the analysis, will be presented.

4 The source of victim blaming

Victim blaming did not appear from nowhere, but is rather something that has been rooted in society with time. In order to be able to understand the process of moving the blame from the offender to the victim there are some concepts and theories that needs to be addressed. This section will illustrate the historicity of the discourse of victim blaming.

4.1 Patriarchy

Patriarchy is a system of beliefs that fundamentally asserts the supremacy of the male (Brinson, 1992:361). It exist through people's upholding of the structures without questioning them, because it has become a system of norms (Thomsson, Elvin-Nowak, 2013:38) that include myths, rules and assumptions which with time are taken for granted (Ibid, 2013:30). Men's position of dominance is normalized through language (Berrington, Jones, 2002:308) and that process includes a normalizing of male aggression. Sexual violence is constructed as a risk that women *can* protect themselves against, *if* acting responsible (Ibid:317). By that, women are socialized into fear of male violence (Ibid:319) and thus become subjects of violence and objects of fear (Marcus, 1992:398), the so called subjection process (Ibid:394). Due to that, women are expected to monitor and restrict their behavior (Berrington, Jones, 2002:317) and even hinder their movements in an attempt to ensure the safety of their bodies (Edwards et al, 2011:767). Dr. Eileen Berrington and Dr. Helen Jones, mean that the relationship between the patriarchal construction of the society and the existence of male violence can be understood as part of a system of power (Berrington, Jones, 2002:308).

Dr. Susan Brinson talks about that the ideas of the patriarchy implies that the inferiority of women is accepted and embedded in the unconscious and becomes institutionalized in laws, myths and cultural attitudes and values (Brinson, 1992:360). This system of norms includes myths, rules and assumptions which with time are taken for granted and become seemingly true (Thomsson, Elvin-Nowak, 2013:30).When something, a norm or a myth, gets the status of "truth" it means that it rarely gets questioned, which is one of the pillars of patriarchy (Ibid, 2013:38). It is by everyone's participation that certain cultural agreements of the essence of women and men are created (Ibid, 2013:118).

4.2 The idea of the woman and the idea of the man

The way the woman is viewed is a result of the way the idea of the woman has been created throughout history. In the beginning of the 20th century, a woman most commonly found herself in the private sphere with the primary role of being a mother. This motherly woman was subscribed features that were not compatible with hard labor, study, or pursuing politics, since this could damage her body, whose primary “job” was to reproduce (Eduards, 2007:13). This role of the mother that is inscribed upon women should be seen as an effect of a system of sexuality that demands that the female body accepts motherhood as its natural essence (Butler, 2007:160). This ideal picture of the woman as a mother and as someone who has desirable female qualities can be categorized as “the Madonna”. But this category has an opposite in the impure female who is portrayed as irresponsible and in need of sexual pleasure – the whore. Worth noting is that in both the role of the mother/madonna and the whore, the body serves as the woman’s prime asset (Eduards, 2007:136) and this is a way to exclude women from the public life (Ibid:274). This dichotomy places women in two categories, the honorable and the lost and thus maintains power structure that offers men unlimited access to the women’s bodies (Ibid:137). The sexual body is both the principal instrument and effect of modern disciplinary power (Henderson, 2013:248). Male supremacy does not only mean excluding women, it also means an entrenchment of women as mothers, wives and sexual beings (Ibid:279).

Men, on the other hand, have throughout history had exclusive right to use violence in order to protect the nation, women and children, and with that have been seen as the defender of women (Ibid:47) and those ideas are still present today (Ibid:68). But as the need for male protection in situations of war have faded, male violence has continued, especially against women, which contradicts the idea of the man as the protector that has been rooted in history (Ibid:267). Professor Maud Eduards claim that men’s violence against women is embedded in the construction of masculinity. This does not mean that all men have violent tendencies due to biological factors but it does mean that violence is a result of power relations and men’s superiority in society. Thus, men’s violence against women is a political issue (Ibid:265).

Eduards claim that identity is built upon certain gender constructions where different bodies are given different meanings and thus get different positions in society (Ibid:34). For example, the qualities of sensibility and rationality have through history been interlocked with masculinity in the western discourse (Hirdman, 2001:63). The man and the qualities connected to masculinity is considered the natural and thus become the measuring rod and the norm, to which women is put in relations to (Eduards, 2007:20, 69). According to Eduards, this differentiated dichotomy in which society create an ideal view of the woman and the man effects the way people act (Ibid:22) and furthermore the binary division serves as frames or norms for how women and men “should” be (Thomsson, Elvin-Nowak, 2013:23).

Ultimately, Edwards acknowledge that a lot of positive progress has been made in regards to gender equality and women's rights. But women are still vulnerable to the violence of men (Edwards, 2007:285) which Edwards claim is a result of remaining existence of conceptions of the female body, sexuality, femininity and masculinity that has not changed (Ibid:286). By this, women are positioned as universally vulnerable and anchored in their own fear, while men are positioned as violent but rational subjects, unaware of their own vulnerability (Henderson, 2013:227). Doctor Holly Henderson writes: "women are raped because they are rapable, and women are rapable because they are women" (Henderson, 2013:241).

4.3 Rape scripts and rape myths

Professor Sharon Marcus talks about cultural and social scripts that exist in a patriarchal society. These scripts should be understood as a framework which is a way for people to organize and understand events and actions (Marcus, 1992:391) and it is furthermore a way for society to cope with men's sexual violence against women (Brinson, 1992:362). Rape scripts describes female bodies as vulnerable, violable, penetrable and wounded (Marcus, 1992: 398) and suggest that social structures inscribe on men's and women's embodied selves and psyches the unequal relationship between men and women that enable rape to occur (Ibid:391). A significant factor of the female victim's experience of rape is the constitutive element. That is, rape is an instance in which discourses of power produce the feminine body as violable and weak (Henderson, 2013:229). In these scripts are the so called rape myths (Marcus,1992:390) which Ryan claims provides prototypical stories that guide behavior and it can be a way for men to justify their behavior (Ryan, 2011:774-775).

Brinson defines rape myths as: "prejudicial, stereotyped or false beliefs about rape, rape victims and rapists" (Brinson, 1992:360) and Dr Kathryn M. Ryan talks about it as "Attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women" (Ryan, 2011:774). Rape myths are present at both individual and institutional levels and it is through this that sexual violence has been sustained and justified throughout history (Edwards et al, 2011:761).

Rape myths exist in symbiosis with cultural stereotypes of "ideal" behavior for women and men (Brinson, 1992:361). Questioning the behavior of the woman before the rape is the same thing as saying that something she did provoked a man to rape her. By talking about being in the "wrong" place, wearing the "wrong" clothes and acting in the "wrong" way presupposes that there is a *right* way for women to behave (Ibid:362). These "norms of femininity" as Berrington and Jones chose to call them, describe the cultural attributes and expectations assigned to women (Berrington, Jones, 2002:309). The horror of rape is not that it steals something from women, but that it makes women into things to be taken (Marcus, 1992:399). The production of a norm of behavior is a form of power that regulate, control and

normalize and aim to produce docile and useful bodies (Henderson, 2013:238). This creates an assumption that that women can, when behaving correct and responsible, avoid the violence of men (Berrington, Jones, 2002:307). Henderson claims that historically women have been told to avoid rape by restricting their choices, movements and behavior (Henderson, 2013:233).

The victim of rape often becomes the target of blame where she, in one aspect or another is held accountable for her victimization. This stems from patriarchal expectations of gender role behavior (Brinson, 1992:359). The danger lies in when these myths are taken to heart by victims who internalize the blame and question their own responsibility for the rape (Ibid:362) which often happen in post-rape context (Burnett et al., 2009:476). By blaming the victim and excusing the offender, the attack against her continue (Brinson, 1992:360).

To sum up, victim blaming is social acceptance of rape myths (Burnett et al., 2009:467) that stems from patriarchal ideas of the supremacy of the man. The production and reproduction of rape scripts, rape myths and victim blaming is an expression of rape culture where instead of questioning the man's behavior, the woman gets exposed to blame by questioning her behavior prior to the rape. Rape culture thus fosters a climate in which victim blaming is normalized (Ibid:467).

5 Analysis

The crime of rape is unusual in its form because it is a crime where the victim can be seen to have provoked the event of the offense. When someone is robbed, it is unlikely that someone would ask if the victim, for example, wore his wallet visibly as if that would have caused her/him to be robbed. But when a woman is raped, her behavior prior to the rape becomes highly relevant. One could claim that there is something wrong in legislation when a woman admittedly is forced to sexual intercourse against her will but receives no judicial restitution. But it is not enough to talk about legislation, it is just as necessary to address the process that enables this to happen; the process of victim blaming. Because by only discussing legislation, the focus end up being on punishment before prevention, and thus the important aspect of why rape and victim blaming occur is disregarded. The legal power should be seen as yet another discourse that is maintaining the contextual structures and victim blaming is not produced only by the judicial system, although it is part of the production process. Rather it should be seen as an expression of power that manifests the ideas of the woman and the man.

The analysis will be conducted by firstly presenting the individual finding of victim blaming in case nr: B5865-13 and secondly relate these findings to power, post-structural feminism and the ideas of the woman and the man, patriarchy and rape myths. This will lead me to the conclusion in which I will relate back to my research question.

5.1 Findings of victim blaming in case nr: B5865-13

The victim blaming in this case, is not only questioning her behavior prior to the rape, but also take into consideration factors that seemingly have nothing to do with the events of the night. As follows are my interpretation of victim blaming in case nr: B5865-13.

Previous sexual experiences:

The woman had previously participated in dominating sex with ex-boyfriends. She states that at one previous occasion she had not consented but had chosen not to report it because she felt that she had not been clear enough (Lunds Tingsrätt, 2014:11). In the court's decision, it is referred to the conversation that took place before the rape where they discussed sexual preferences (Ibid:23) although both the man and the woman states that they never actually discussed dominating sex (Ibid:5).

It was then his interpretation, through that she has pressed his hand hard against her vagina as well as his understanding, that she liked unconventional sex, that led him to believe that she liked it “rough” (Ibid:23). My interpretation of this is that the reference to previous sexual experiences indicates presumptions of promiscuity which *per se* have negative connotations for women.

The fact that the court ruling included the victims previous sexual experiences can be related to the ideas of the woman and more specifically the Madonna/whore dichotomy; the way in which the woman is constructed as the honorable or the lost. The expectations of women as the honorable, entrenched and enabled by patriarchy, is the desirable way for women to behave. By referring to the woman’s previous sexual experiences, the normalized idea of women, that is entrenched in society and instilled on us through history, is seen as abnormal behavior. Having an ideal way for women to behave that is considered to be right, presupposes that there is a wrong way for women to behave. With post-structural feminism in mind these “wrong” and “right” ways of behaving are connected to expectations that have been socially constructed as female features. Women thus grow up to be a social construction of expectations. With Foucault’s view on power in mind, the fact that a woman gets blamed for the occurrence of rape needs to be viewed through a historic lens. Through history, a woman’s body has not been hers to claim, but has rather been a tool for reproduction and for the pleasure of men, and these ideas has come to give the impression to be true images of reality. But with a Foucauldian power perspective in mind the ideas of the woman and her sexuality is merely a truth effect, which have been normalized by discourse and upheld by patriarchy. Sexuality is, still today, an expression of power that gives reason to historical patterns. The power of sexuality is that it disciplines bodies by inscribing meanings that are limiting in their existence. The norms of expected and idealized behavior for a woman, the Madonna, were not compatible with the woman’s sexual experiences in case nr: B5865-13, which rather can be related to the idea of the “whore”, as someone irresponsible and in need of sexual pleasures. My analysis of this is that her previous sexual relations are undesirable ways for a woman to behave, and the fact that she previously had found pleasure in these kinds of activities, lowered her credibility and excused the man’s behavior.

A matter that is not taken into consideration is that the man says that he recognized the way she said “no” from his experience with other girls. This is briefly mentioned at one point but is not further explored. What this display is that the woman’s previous sexual experiences were important, but not the man’s. I find this particular statement contradictory, since he claims to not have had experienced dominating sex before, and thus one can wonder why he has been in situations where girls said “no” during sex before. It further shows that the man is given the benefit of the doubt while the woman is being doubted. It is a patriarchal belief that the supremacy of the man is embedded in the unconscious and thus men’s behavior is not questioned in the same extent as women’s. The disregarding of this statement show that only the woman’s previous sexual experiences matter and because of that, the patriarchy and the discourse of “norms of femininity” and in extension victim blaming is continuously upheld and enabled.

As mentioned above, the woman had experienced a situation where she felt that she did not consent to dominating sex before. But since she felt that she had not been clear enough, she chose to not report at that time. I interpret this as a statement that can be seen to strengthen the woman's testimony as she obviously felt that she had been clear enough this time, compared to the previous. But it might have been used to strengthen his testimony, since it can be seen to contribute to her inconsistency. By that I mean that it could be interpreted that because she was insecure about being clear enough the time she did not report, the odds are that she could have been unclear this time as well. This is not something that is referred to in the actual decision of the court ruling, therefore it is hard to assess if this particular statement might have been beneficiary to the man or the woman, but one can wonder why it is relevant to begin with. I found this interesting because it further exemplifies factors that seemingly have nothing to do with the case is brought up in the court ruling.

Anti-depressives:

In the court ruling, it is mentioned that the woman previously has been depressed and that she takes anti-depressives, which she had done that day as well (Ibid:11). This is initially mentioned as a background to the case in the court ruling, but in the actual decision, this is once again referred to. Her strong reaction of distress and fear after the rape, which is confirmed by a witness and the police, is connected to the fact that she is taking anti-depressives and therefore the anxiety she experienced could have emerged whether her story is true or not (Ibid:11). This implicates, that the woman is not quite mentally stable and the anti-depressives somehow made her less reliable. In my view, this is a way to diminish her experience and once again excusing the man's behavior.

Women have, through history, been put in relation to men. Men have been seen as the natural, the measuring rod to which women have been contrasted. The starting point of the man's supremacy alone, can give strength to that the man's testimony will be favored before the woman's in the case nr: B5865-13. The patriarchal believe is that men are speaking from a superior position and because of that women are speaking from a defensive and subordinated position. Thus, the man has an advantage to begin with. Additionally, there is a dichotomy between men and women that makes certain qualities perceived as male and other as female. Embedded in history are the ideas of the man's rationality and in contrasting the woman's presumable irrationality. The fact that the victim's use of anti-depressives can be connected to that the man, with his rationality, is more trustworthy. This testifies of an unequal gender power relation, where the man and his so called natural qualities, allows his story to be the starting point that the woman's story have to refute. Due to her subordinated position, things that seemingly have nothing to do with the rape, such as her use of anti-depressives, become factors of significance.

A post-structural feminist would claim that there are no such things as male and female qualities as gender does not exist. Rather these qualities are simply abstractions imposed on the biological sex and is upheld by patriarchy and everyone's participation. Socially accepted norms about gender exaggerate the biological differences, and these feminine and masculine norms exist only as

constructions taken to heart by the individuals in society. Women become the aberration and anomaly in comparison to men but also in comparison to the “norms of femininity”. This is a result of that women are their gender and by that all the qualities that are socially constructed to be seen as female. In case nr: B5865-13 the woman did not act in agreement to these gendered norms which can be seen as a factor that influenced her story being questioned in a larger extent than the man’s.

”I thought she liked it”:

The man perceived the woman’s “no” and “stop” as part of the dominant sex games and he expressed that he thought she liked it, and therefore did not stop when she said this. He, according to himself, was simply replying to her initiative of dominating sex (Ibid:23) while her perception was that he enjoyed the fact that she did not like it (Ibid:9). However, he can account for six separate times that he stopped when she very clearly protested by screaming or with body language. He puts those physical objections in contrast to what he perceived as weakly expressed “no” and ”stop”, which were not as strong as the six other objection made by her, and thus he thought of it as part of the dominating sex (Ibid:23). He says that he would have taken her protest seriously, had she said his name or changed the tone of her voice (Ibid:17). The fact that he did not ask her if she was okay is explained by that he did not want to ruin the sex for her (Ibid:13). Also taken into consideration was a side of his story, which the woman denies, but is referred to as her encouraging him. He claims that at one point, she took his penis and steered it towards her vagina which he perceived as that she wanted to continue (Ibid:13, 23). Furthermore, he says that he spanked her 30 times on the bottom, but since she counted out loud, he thought she liked it (Ibid:14) The main reason that led to the man being acquitted can be summarized here; that he did not *intend* to rape her. He thought she liked it and that it was a misunderstanding that led him to believe that “no” actually meant “yes”. The fact that she never really consented to dominating sex is undermined by his interpretation of the event. It goes to show that his perception of the rape triumphs hers.

Men’s violence against women is embedded in the construction of masculinity and the historical conception of men’s exclusive right to use violence in order to protect the nation, women and children. Rape is the opposite of protection, but it can be seen as a result of unequal power relations and men’s superiority in society. There were several elements of violence that were done to the woman by the man during the rape in case nr: B5865-13; slap in the face, spank on the bottom and blocking of air ways being the most severe. The recurrent excuse and defense mechanism used by the man is that he thought she liked it. Take the example of him spanking her, in which she “voluntarily” counted out loud. Here the dimension of the power relation is disregarded. Because according to her, he told her to count out loud, and as she was scared of him choking her again, she obeyed. One thing that is briefly touched upon in case nr: B5865-13 is that the man was stronger than her and that they were alone in his apartment. By that, one can claim that she was in a clear disadvantage and in a vulnerable situation. Throughout the court ruling, the factor of fear is disregarded and not taken into consideration. The fact of the matter is that, the

woman internalized the responsibility of protecting her own body. She said “no”, she said “stop”, she screamed and physically protested. But then new excuses appear. Yes, she said “no” and “stop”, but not loud or firm enough. Yes she physically protested but she should not have encouraged him. So what does this tell us? It says that even if a woman does conform to social scripts of how a woman should behave in situations like this, it is not enough. Rape is an expression of power that is not only a matter of violence but it also a producer of social scripts that risk to be normalized and institutionalized.

Through a lens of power, victim blaming discourse shapes people’s perception of what happens when women act a certain way. Adding a post-structural feminist perspective, gender is simply an identity that with time has been established through repetitive actions. What this particular case illustrates is that saying “no” and “stop” is not enough. In regards to power this has a both productive and oppressive effect in the sense that it produces norms regarding ways of being and talking, which can be restricting and limiting. By saying that “no” is not enough, women are forced into a state of fear that further cements the gender roles of women and men which in extension enables a rape culture.

Presumable inconsistency:

The woman had mentioned to one of the witnesses that maybe she should have done more to make him understand that she did not want to have sexual intercourse, and that she wanted him to stop. This piece of information is also used as an argument to have the man acquitted (Ibid:24). My interpretation is that this can rather be seen as a testimony of that the woman is part in reproducing the discourse of victim blaming. That fact that she questioned the event can be seen as a way for her to make reason of the rape. But by doing so, she participated in putting the blame on herself, and when reading the court ruling, it can be perceived as if her self-doubt undermined the evidence of her feelings and perception during and directly after the rape. Through a post-structural feminist perspective, a reproduction of the dominant discourse by the subjects own participation is a result of structures, and thus not unexpected behavior, but in the court ruling this is used to strengthen the man’s testimony. The man has in detail explained how he perceived what happened that night and has been consistent with his story. The woman’s story however, is painted out as more inconsistent due to the fact that she questioned what had happened.

According to Foucault, power means opportunities for some and restrictions for others, with feminism in mind, opportunities for men and restrictions for women. In case nr: B5865-13 power meant opportunities for the man, as he had historical opportunities in being viewed as the rational and sensible. The woman rather, had historical limitations in which she is expected to monitor and restrict her body, and thus began questioning herself and her story. In a power gender perspective, this case reinforces the constant threat of rape as something that women need to be cautious of.

The woman tried to make sense of what happened which led her to question her own experience and behavior. In a conversation with one of the witnesses, someone who was friends with both the man and the woman, she expressed a disbelief regarding what had happened and questioned her own experience of the event. This expression of doubt came to strengthen the man's testimony. One could claim that since women historically have been told to avoid rape by restricting their behavior, then this woman is no exception, and thus she is a victim not only of rape but of the social construction that she somehow is responsible for what was done to her. This is the practice in which the victim internalizes the blame; hence becomes a participator in the blame process; she becomes a discursive agent. The woman's individual frame of reference can be said to have been influenced by rape myths. She thus is part of the cultural context that have normalized victim blaming and by questioning her own behavior she is mirroring and maintaining the dominant discourses. In other words, she constructs and is constructed by the idea that had she acted responsible, the rape would have never happened. This process occurs because that is what women have been socialized into believing throughout history. Women being responsible for their own victimization is the discourse that is produced and reproduced in situations like this. Accepting the discourse of victim blaming is accepting a subjugated position. I want to make clear that I do not put any blame on the woman, but I am rather pointing out the fact that she is victimized not only by the rape, but also by the patriarchal beliefs that are entrenched upon women.

To summarize, by these victim blaming findings, it can be concluded that the woman, through the theories presented in this thesis, and especially in accordance with existing "norms of femininity", did not act responsible enough to avoid the rape. She had had experience with dominating sex before, hence; she was promiscuous, which has negative connotations for women. She did not object loud enough, hence; she liked it. She was on anti-depressives and took the pill late that day, hence; she was mentally unstable and therefore incapable to make the assessment if she had been raped or not. She was presumably inconsistent, hence; her questioning her own experience lowered her credibility. All of these factors played a part in the decision to have the man acquitted. Generally, I found that most of the findings used to put the blame on the woman could just as well have been used to strengthen her testimony rather than his. Allow me to illustrate; she had experienced dominated sex before, hence; she knew for sure that this was not just dominant sex games. She said "no" and "stop", screamed and physically protested, hence; she made it clear that she did *not* like it. She doubted herself, hence; she tried to make sense of what happened. Above is illustrate the different interpretations that can be found when reading the court ruling, although it is a simplification of what can be perceived as a complex situation, when word stands against word. But as previously mentioned and illustrated above, the woman's perception of the rape was undermined by the man's interpretation, and by that, the victim became the subject of blame.

6 Conclusion

The purpose of this thesis has not been to criticize the law, but to examine what the law gives expression to, as well as contribute insight to how dominant discourses enables victim blaming and contribute to cement a rape culture. So, how can we understand the process in which victim blaming regarding rape is (re)produced in case nr: B5865-13?

What I have found is that the history of the discourse has created ideal gendered behavior which makes for the unequal power relations between women and men today. Trying to speak from a more general point of view, I find that if there are factors in a rape case, which somehow contradict the idea of the woman, then these aspects risk being used in a victim blaming process. It can thus be claimed that men's superior social position, enabled by patriarchy, skews justice. Although this particular case resulted in demonstrations and media attention, much of the debate ended up being about the need for new legislation and less about the structures that enable victim blaming to occur. The court ruling in case nr: B5865-13 is simply an effect of existing power structures. In other words, the ruling had possibly not been that, had the ideas of the woman and the man not been deeply rooted in our societies.

The social consequences of victim blaming is in the most obvious sense, that the victim does not get judicial retribution. But the court ruling also sets a dangerous precedent where the offender is given the right to define rape. In other words, it cements and excuses men's violence against women and the idea that a man has a right to a woman's body. As illustrated by case nr: B5865-13, everyone involved, victim, offender and institution, are all discursive agents in the process of victim blaming. From the theories and perspectives that I have chosen, this process can be understood as one that is enabled and cemented, produced and reproduced, constituted and constitutes through the historical discourse, in which the ideas of the woman and the man stems from. As long as the victim of rape is forced to bear the burden of blame, the more rooted ideas of the woman's and the man's role, cemented through the patriarchy, is less likely to change. This enables rape myths to be sustained and by extension foster a rape culture that allows sexual violence against women to continue.

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